

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

CRAIG M. MILLER,)
Plaintiff,)
v.)
BRIAN HENRY and HATCHED)
DEVELOPMENT, INC.,)
Defendants.)
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)
2:11-CV-01724-PMP-PAL
ORDER

Presently before the Court is Defendants' Supplemental Declaration in Support of Motion for Attorney's Fees (Doc. #45), filed on October 14, 2013. Plaintiff filed an Opposition (Doc. #46) on October 23, 2013. Defendants filed a Reply (Doc. #47) on October 30, 2013.

The parties are familiar with the facts of this case, and the Court will not repeat them here except where necessary. Defendants previously moved for attorney's fees under Nevada Revised Statutes § 18.010(2)(b), arguing Plaintiff's claims were groundless and brought or maintained to harass Defendants. Defendants requested approximately \$225,000.00 in attorney's fees. The Court partially granted the prior motion and directed Defendants to file a supplemental fee affidavit setting forth "only those fees incurred in relation to the fraud and conspiracy claims." (Order (Doc. #44) at 5.)

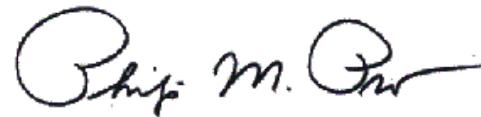
1 Defendants have filed a supplemental fee memorandum, indicating that because
2 Plaintiff's contract, equitable, and fraud and conspiracy claims arose out of the same factual
3 allegations, apportioning the fees incurred in relation to the fraud and conspiracy claims is
4 challenging. Defendants viewed the fraud and conspiracy claims as one third of the case,
5 and thus Defendants suggest the Court award one third of the fees incurred, if the Court is
6 inclined to apportion. Plaintiff responds that Defendants have failed to follow the Court's
7 directive of identifying those fees incurred only in relation to the fraud and conspiracy
8 claims. Plaintiff suggests the Court award fees for only a few identified time entries,
9 amounting to approximately \$4,500 in fees.

10 The Court will not apportion the fees as Plaintiff suggests, as Plaintiff's proposed
11 apportionment fails to account for the intertwined factual nature of the various claims and
12 the difficulty that engenders for parsing out fees incurred in relation to the fraud and
13 conspiracy claims. On the other hand, although Defendants viewed the case in thirds, the
14 contract claims, along with the related quasi-contract unjust enrichment and declaratory
15 relief claims, predominated over the other claims. The Court therefore does not find a one
16 third apportionment appropriate. Instead, the Court concludes a twenty percent
17 apportionment accurately captures the time devoted to the fraud and conspiracy claims.
18 These claims required some discovery and briefing on the elements of fraud and conspiracy
19 beyond the common factual scenario with the contract claims, but these claims constituted a
20 lesser fraction of the resources expended by the parties when compared to the contract
21 claims. Moreover, Defendants' request for a one third apportionment for the fraud and
22 conspiracy claims is belied by the fact that these claims were groundless, and thus required
23 less briefing to defend against. The Court therefore will award Defendants a total of
24 \$55,129.90, reflecting twenty percent of \$214,834.50 (\$42,966.90) plus \$6,520.00 incurred
25 in preparing the supplemental fee affidavit, plus \$5,640.00 incurred in preparing the
26 supplemental reply.

1 IT IS THEREFORE ORDERED that Judgment is hereby entered in favor of
2 Defendants Brian Henry and Hatched Development, Inc. and against Plaintiff Craig Miller
3 in the amount of \$55,129.90 in attorney's fees.

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5 DATED: November 25, 2013


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7 PHILIP M. PRO
United States District Judge

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